

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

13 CV 3436

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Marc Pierre

Plaintiff,

Against



**COMPLAINT  
PLAINTIFF DEMANDS TRIAL BY  
JURY**

THE CITY OF NEW YORK;

P.O. DILIBERTO,

TAX NO.: 15189  
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Take notice, I, the Plaintiff, Marc Pierre, hereby appears in this action of my own free will and volition. Any manner of questions or demands pertaining to this action may be served to me at this address 316 West 97 st. apt. 44C, New York, N.Y. 10025.

**NATURE OF THE ACTION**

1. This is an action at law to redress the deprivation of rights secured to me under the color of law, statute, ordinance, regulation, custom, and or to redress the deprivation of rights, privileges, and immunities secured to me by the First, Fourth, Eighth, Ninth, and Tenth Amendments to the Constitution of the United States, and by Title 42 U.S.C. 1983 and 1985, [and arising under the law and statutes of the State of New York].

2. This is an action to further seek compensation for the serious and continuous injuries sustained by I, the Plaintiff, as duly noted in court case no. 11 CV 0782, as a result of the negligence of the Defendant, perpetrated while said Defendants' police officer were in the process of illegally and unlawfully assaulting.

## **JURISDICTION**

1. The jurisdiction of this court is invoked under 28 U.S.C. 1343(3), this being an action authorized by law to redress the deprivation of rights secured under color of state and city law, statute, ordinance, regulation, custom and usage of a right, privilege and immunity secured to the plaintiff by the by the Fourth, Eighth, Ninth, and Tenth Amendment to the Constitution of the United States.
2. All causes of action not relying exclusively on the aforementioned federal causes of action as a basis of this Court's jurisdiction are based on the Court's supplemental jurisdiction pursuant to 28 U.S.C. 1367 to hear state law causes of action. The events, parties, transactions and injuries that form the basis of plaintiff's federal claims are identical to the events, parties, transactions, and injuries that form the basis of plaintiff's claims under applicable State and City laws.
3. As the deprivation of rights complained of herein occurred within the Southern District of New York, venue is proper in this district pursuant to 28 U.S.C. 1391(b) and (c).

## **PARTIES**

1. Plaintiff Marc Pierre resides in Kings County and is a resident of the State of New York.

2. Defendants Police Officers are, and at all times relevant to this action were, officers of the City of New York Police Department and acting under color of state law. Said officers are being sued in both their individual and official capacities.
3. Defendant Officers Doe are unknown police officers for the City of New York, acting under color of state law. They are being sued in both their individual and official capacity.
4. Officer Diliberto is at all times relevant to this action was a police officer with the City of New York Police Department and acting under color of law. He is being sued in both his individual and official capacity.
5. The Defendant, City of New York is a municipality in the State of New York and employs the Defendants Police Officers.

### **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. On March 19, 2013 I was in the process of trying to get someone to swipe me onto the train at the 96 street train station.
2. P.O. Dilberto saw me approached and told me that I was pan-handling, which wasn't allowed on the train station, and for me to exit the train station. While I was contemplating what he said he suddenly rushed me and snatched me and dragged me out of the train station. During that process he elbowed me in the stomach.
3. A gentleman who was walking by saw the altercation and offered to swipe me in. He passed me the metro card but when I went to get on officer Diliberto blocked my entrance to the train station and wouldn't let me on. He told me if I reentered the train

station he would arrest me. I told officer Diliberto that I currently had a lawsuit against the city and if he didn't let me on the train I would sue him to which he replied that he didn't care.

4. The gentlemen told me to relax while he talked to officer Diliberto. He told the officer that he was a corporate lawyer and that now that I had a metro card I had a right to get on the train. Officer Diliberto wouldn't listen to him and refused to let me get on the train. That's when my stomach began to hurt.
5. I went to a phone and called 311 and told them that I had just been assaulted by a police officer. I made a report to I.A.B. under file No. 2013-11697. 311 also sent an ambulance and a police sergeant over who told me talk to him once I got off the phone. When I finished with I.A.B. I went to the ambulance where they checked me out. During that process the cops came over and told me that they had seen the video. I told them that I was a USMC veteran and that officer had used lethal force against me for no reason. They stated that they didn't think the officer used excessive force. I stated to them that because I'm a veteran, I could snap on him unknowingly and he should use force as a last result. They also stated that pan-handling was illegal in New York so technically the officer didn't do anything wrong. I told them that pan-handling wasn't illegal in N.Y. and if I wasn't causing harm to anybody officer Diliberto had no right to put his hands on me. They continued to insist that because I was pan-handling he had a right to use force against me. That's when I told them that I was sovereign and that their corporate laws didn't apply to me anyway.



6. The Officers then began speaking among themselves and looking for a reason to arrest me and that's when I stated that I had already spoken to I.A.B.. Then they stated that they would give me a summons for disorderly conduct.
7. After a few minutes of conferencing they told the ambulance drivers to go and that my summons was in the mail. The ambulance then took me to St. Lukes Hospital where I was treated for abdominal pain and released.
8. That even though the defendant police officer knew, or should have known, based on the facts that no crime had been committed, or there was there a reason to stop and incriminate me, he still proceeded to threaten, intimidate, use excessive force and assault me, further aggravating my injuries.
9. At no time did I commit any offense against the laws of New York City and or State for which permitted the officer to use excessive force against me.
10. As a direct and proximate result of defendants' actions, and as duly noted in court case no. 11 CV 0782, due to the continuous malicious of prosecution, I have suffered and continue to suffer injuries, including but not limited to emotional distress, loss of income, nightmares, panic attacks, mental anguish and unwarranted severe anger bouts some or all of which may be permanent.
11. My injuries and use of excessive force because of defendants' knowledge of a lack of any legitimated cause or justification, were intentional, unlawful, malicious, reckless and in bad faith.
12. As a direct and proximate result of my continuous unlawful detention, assault, confinement, as duly noted in court case no. 11 CV 0782, I have lived in terror of their

Against all Defendants

1. I hereby re-state all paragraphs above of this complaint, as though fully set forth below.
2. By using excessive force and assaulting me on March 19, 2013 without justification, probable cause or reasonable suspicion, the Officers, Defendants deprived me of rights, remedies, privileges, and immunities guaranteed in the Constitution, in violation of 42 U.S.C. Section 1983, including, but not limited to rights guaranteed by the First, Fourth, Eighth, Ninth, Tenth Amendments of the United States Constitution.
3. In addition, the Defendant conspired among themselves to deprive me of my constitutional rights secured by 42 U.S.C. Section 1983, and by the First, Fourth, Eighth, Ninth, Tenth Amendments of the United States Constitution.
4. The defendant acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employment as NYPD Officers were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendant acted willfully, knowingly, and with the specific intent to deprive the Plaintiff of his constitutional rights secured by 42 U.S.C. Section 1983, and by the Fourth, Eighth, Ninth, Tenth Amendments to the United States Constitution and The Commerce Act.
5. As a direct and proximate result of the misconduct and abuse of authority detailed above, I have sustained the damages herein before stated.

### **AS A SECOND CAUSE OF ACTION:**

Sovereignty resides with the People, Ninth and Tenth Amendments U.S. Constitution

attack, and continue to suffer various emotional attacks, in addition, and have suffered loss of income, been unable to function normally which has caused a severe strain and breakdown in my personal relationships, in and outside of my home.

13. As a direct and proximate result of defendants' actions, I was assaulted without just or probable cause.
14. As a direct and proximate result of defendants' actions, I was deprived of rights, privileges and immunities under the First, Fourth, Eighth, Ninth and Tenth Amendments to the United States Constitution and the laws of the City of New York and the State of New York.
15. Defendant City of New York, as duly noted in court case no. CV 11 0782, as a matter of policy and practice, has with deliberate indifference failed to properly sanction or discipline police officers including the defendants in this case, for the continuous violations of the constitutional rights of citizens, thereby causing police officers including defendants in this case, to continuously engage in unlawful conduct.
16. Defendant City of New York, as duly noted in court case no. CV 11 0782, as a matter of policy and practice, has with deliberate indifference failed to sanction or discipline police officers including the defendants in this case, who are aware of and subsequently conceal violations of the constitutional rights of citizens by other police officers thereby causing and encouraging police officers including defendants in this case, to engage in unlawful conduct.
17. The actions of defendants, acting under color of State law, deprived me of my rights, privileges and immunities under the laws and Constitution of the United States; in

particular, the rights to be secure in his person and property, to be free from excessive use of force and from malicious prosecution, abuse of process, and the right to due process.

18. By these actions, defendants have deprived me of rights secured by the Fourth, Eighth, Ninth, Tenth Amendments to the United States Constitution, and The Commerce Act in violation of 42 U.S.C. Section 1983.

19. The United States of America is defined as a Federal Corporation in 28 U.S.C. 3002(15). The actions of defendants, acting under Color of Law, deprived me of unalienable rights endowed to all men by the All-Mighty Creator which is the basis of all Law. Sovereignty resides with the people as stated in the Ninth and Tenth Amendments. Because I was operating in my sovereign capacity when said defendants detained me, and stated thus, all of their actions are rendered null and void. If ever the law of the All-Mighty Creator and man are at variance, the former are to be obeyed in derogation of the latter.[Acts 5:29]

20. Consent makes the Law. A contract is a law between the parties, which can acquire force only by consent. I never consented to any of the actions said defendants exercised over me.

21. This action has been commenced within six months after the happening of the event upon which the claim is based.

### **AS A FIRST CAUSE OF ACTION:**

42 U.S.C. Section 1983



1. I hereby restate all paragraphs of this complaint, as though fully set below.
2. The United States of America is defined as a Federal Corporation in 28 U.S.C. 3002(15).
3. The actions of defendants, acting under Color of Law, deprived me of unalienable rights endowed to all men by the All-Mighty Creator which is the basis of all Law. Sovereignty resides with the people as stated in the Ninth and Tenth Amendments. Because I was operating in my Sovereign capacity when said defendants detained me, and stated thus, all of their actions are rendered null and void.
4. If ever the law of the All-Mighty Creator and man are at variance, the former are to be obeyed in derogation of the latter.[Acts 5:29]

### **AS A THIRD CAUSE OF ACTION:**

New York State Constitution, Art. 1 Section 12 against all Defendants

1. I hereby restate all paragraphs of this complaint, as though fully set forth below.
2. By assaulting me without probable cause or reasonable suspicion, and using excessive force, the Defendants Officers deprived me of rights, remedies, privileges, and immunities guaranteed to every New Yorker by Article 1, Section 12 of the New York Constitution.
3. In addition, the Defendant Officers conspired among themselves to deprive me of my constitutional rights secured by Article 1, Section 12 of the New York Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.
4. The Defendants Officers acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employment as